

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARVIN WADDLETON, III
TDCJ-CID #1355746

v.

NORRIS JACKSON, ET AL.

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C.A. NO. C-10-267

**MEMORANDUM AND RECOMMENDATION TO DENY
PLAINTIFF'S MOTION TO PROCEED *IN FORMA PAUPERIS***

Plaintiff is a state inmate currently incarcerated at the McConnell Unit in Beeville, Texas who has filed a civil rights action pursuant to 42 U.S.C. § 1983. (D.E. 1). Pending is his motion to proceed *in forma pauperis*. (D.E. 2). Pending also is his motion to waive the court filing fee. (D.E. 3).

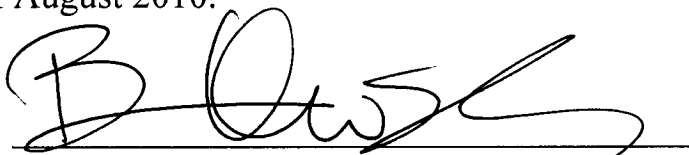
In the motion to proceed *in forma pauperis*, plaintiff indicates that he currently has cash in bank accounts or his prison account in the amount of \$2,755.62. (D.E. 2, at 1). The filing fee for a civil action is \$350.00.

In support of the pending motion to waive the filing fee, plaintiff cites 28 U.S.C. § 1915(a). (D.E. 3, at 1). While that subsection does address proceeding *in forma pauperis* in civil actions, plaintiff fails to address the fact that Congress provided additional requirements for prisoners seeking to proceed *in forma pauperis*. Specifically, "if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing

fee.” 28 U.S.C. § 1915(b). In other words, if an inmate qualifies to proceed *in forma pauperis*, that plaintiff will still be required to pay the filing fee through installments.

It is respectfully recommended that plaintiff be found not indigent and that his application to proceed *in forma pauperis*, (D.E. 2), be denied. It is further respectfully recommended that plaintiff be instructed to pay the filing fee within twenty (20) days of the date of entry of any order adopting this memorandum and recommendation, or voluntarily dismiss the action. Moreover, it is respectfully recommended that plaintiff be advised that failure to pay the filing fee within the time period proscribed may result in dismissal of his action for failure to prosecute. Finally, it is respectfully recommended that plaintiff’s motion to waive the court filing fee, (D.E. 3), be denied.

ORDERED this 11th day of August 2010.


BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **FOURTEEN (14) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(C); Rule 8(b)(3) of the Rules Governing § 2254 Cases; Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations in a magistrate judge's report and recommendation within FOURTEEN (14) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).